

MINUTES

ADMINISTRATIVE CONFERENCE

Thursday and Friday, April 14-15, 2016 // Boise, Idaho

The Administrative Conference was called to order on Thursday, April 14, 2016, at 1:30 pm MDT by Chief Justice Jim Jones. Administrative District Judges in attendance included: Hon. Lansing Haynes, Hon. Bradley Ford, Hon. Timothy Hansen, Hon. Richard Bevan, Hon. Stephen Dunn, and Hon. Darren Simpson. Trial Court Administrators present included: Karlene Behringer, Doug Tyler, Larry Reiner, Shelli Tubbs, Suzanne Johnson, and Burt Butler. Unable to attend was Hon. Jay Gaskill, Acting Trial Court Administrator.

Others joining for all or part of the Conference included: Interim Administrative Director of the Courts Justice Linda Copple Trout; Hon. Barry Wood, Interim Deputy Administrative Director of the Courts; Court of Appeals Chief Judge John Melanson; Hon. Kent Merica, President – Magistrate Judges Association; Hon. Rick Carnaroli, President-elect – Magistrate Judges Association; Hon. Jayme Sullivan, Secretary-Treasurer – Magistrate Judges Association; Roland Gammill; Janica Bisharat; Andrea Patterson; Kevin Iwersen; Michael Henderson; Cathy Derden; and Steve Kenyon. Unable to attend was Hon. Mitchell Brown, President – District Judges Association.

Chief Justice Jones remarked that he will be retiring at the end of this year, and has appreciated his time on the Court.

A. Mission Statement, Values and Strategic Goals and Objectives of the Idaho Courts and ICAR 43A

1. At each meeting, the Administrative Conference reviews the Court's Mission Statement and ICAR 43A regarding the role and responsibilities of the Administrative Conference. Suggested edits were discussed under agenda item A.1.

B. Approval of Minutes of the February 2, 2015 Administrative Conference

IT WAS MOVED BY JUDGE SIMPSON AND SECONDED BY KARLENE BEHRINGER TO APPROVE THE MINUTES OF THE FEBRUARY 2, 2016 ADMINISTRATIVE CONFERENCE. THE MOTION PASSED UNANIMOUSLY.

C. Update on Recruitment for the Administrative Director of the Courts

Recruitment is underway for a new Administrative Director of the Courts, with the first round of interviews scheduled for April 22, 2016. Subsequent interviews will be scheduled as needed, in the hopes of having a new director on board by July 1, 2016.

D. Supreme Court Action on Administrative Conference Recommendations and other Supreme Court Updates

Justice Trout briefed the Conference on Court action taken on the following items:

1. Draft ADA Policy as amended and the accompanying ADA materials for Website
The Court amended the ADA materials to clarify the definition of "Idaho Courts" (to clearly include county obligations) and to clarify that the Idaho Courts will provide reasonable accommodations to those accessing the courts. Burt Butler suggested that the cities' statutory obligation to provide facilities should probably also be included. Justice Trout will that back to the Court.

Action Item

- The suggestion to include the cities' stator obligation to provide facilities in the ADA Policy will be taken back to the Court for its consideration.
2. Amendments 1, 2, 4, and 5 to ICAR 32
The Court reviewed the February 17, 2016, memo from Michael Henderson, together with the update of February 24, 2016, and approved the amendments proposed in paragraphs 1, 2, 4 and 5 of the 2/17 memo with the additional amendments to 32 (i) (3-6) as set forth in the 2/24 memo, and that the issue of exemptions for dates of birth and copying of court records be submitted back to the Rule 32 Committee for further consideration.

Additionally, a small work group will review what information in criminal cases should be available. The new [ICAR 32](#) is online and reflects with more clarity the recommendations from the Administrative Conference.

3. Amendments to the Idaho Rules of Civil Procedure and Idaho Rules for Small Claims

Cathy Derden presented a memo and information to the Court on these amendments, as well as a proposal to amend the Rule regarding the caption. The Court approved the caption amendment and all of the other proposed amendments to the [Idaho Rules of Civil Procedure and the Idaho Rules for Small Claims](#).

4. Amendments to Idaho Criminal Rules

The Court approved the proposed [amendments to the Idaho Criminal Rules](#).

E. Legislative and Budget Matters

1. FY16 Budget Matters (ending June 30, 2016)

a. Roland Gammill reported to the Conference on the current status of the FY16 General and Dedicated Fund budgets and revenues as follows:

(1) Technology Fund balances ([I.C. §1-1623](#)) and Filing Fee Revenues ([HB 509 /2014](#))

- SUDS fund 0182 is meeting and exceeding revenue targets
- Court Technology Fund 0314 is more than \$600,000 below target for FY16, largely due to the continued decline of civil filing fee revenues. On a positive note, the monthly HB509 revenues for March FY16 were up \$37,000 over March FY15 and represents the second highest month in FY16, getting closer to the monthly goal of \$457,000 per month.

(2) Drug & Mental Health Courts/Family Court Services Fund ([I.C. §1-1625](#))

- Drug Court, Mental Health Court, Family Court Services Fund 0340 is reflecting a small increase due to the 2% liquor surcharge and continued strong liquor sales.

(3) Other Dedicated Funds: nothing substantial to report as far as revenue increases or decreases. Cash balances in dedicated funds are stable and on target for FY16.

b. Review of year-to-date expenditures in the general and dedicated funds.

It was reported that we are on track to fully expend the General Fund appropriation balances. It will be proposed to the Supreme Court to fully utilize all available General Fund salary savings to cover unbudgeted year-end expenditures, potential of a 3% CEC early implementation in FY16, potential comp time buy outs, and help cover costs associated with the resource surge needed for the iCourt implementation. Dedicated funds are on pace to be expended as per the FY16 financial plans. The Court Technology Fund may have some expenditures delayed from FY16 to FY17 due to the postponement of Ada County's go-live to August.

2. FY17 Budget Matters (July 1, 2016 - June 30, 2017)

Roland Gammill and Senior Judge Wood reviewed the Court's FY17 appropriations ([HB576](#)), the resulting proposed budget, and other related matters, including:

a. FY17 Program Maintenance

FY17 Base	\$62,434,600
• Benefit Costs*	\$340,400
• Statewide Cost Allocation.....	\$100
• Annualizations (2 new magistrate judges)	\$73,800
• CEC for non-judicial employees	\$434,700
	\$63,283,600

* The legislature funded the significant cost increase of insurance premiums for state employees (over \$1000 per employee).

b. FY17 Enhancements

- Court Technology: Phase 3 of 5..... \$2,000,000
- Judicial CEC ([SB 1420](#) and [SB 1427](#))..... \$815,700
- Judicial leadership CEC \$-0-
- Drug Court Fund Restoration
 - 21.5 FTPs to General Fund \$2,617,000
 - Operations to General Fund \$332,000
 - [HB 608](#) subtotal \$2,949,000
 - Senior Judges ([HB 576](#))..... \$865,000
 - Cooperative Welfare Fund..... \$257,800
 - \$4,071,800
 - Less 80% Emergency Surcharge ([HB461](#))..... (\$2,898,500)
 - Net Benefit \$1,173,300
 - Language Access \$443,300
- Judicial Excellence & Education \$118,000
- Per Diem Increase..... \$-0-

c. Other FY17 Appropriations benefiting the Courts

- Department of Juvenile Corrections (HB 562)
 - Prevention & Cessation..... \$1,062,800
- Department of Correction(SB 1409)
 - Substance Abuse Treatment..... \$1,859,200
- Department of Health & Welfare (HB 579)
 - New Crisis Center – Region 4 \$506,700
 - New Crisis Center – Region 5 \$1,013,300

Judge Wood reported that the presentations by magistrate and district judges to the House and Senate germane committees were very productive and appreciated. We are on tap to repeat the presentations in 2017.

Justice Trout noted that the legislature provided funding to the Public Defense Commission, and counties are encouraged to apply for grant funding to help comply with new standards set for public defenders. In addition, the Commission is hiring a new executive director, who will be in charge of creating rules, standards, and the process for awarding grants. An emergency fund is also available if a county has a catastrophic court case that exhausts its budget. It is hoped that the new Commission's existence will result in a higher level of skills in public defenders appearing in the courts.

d. FY17 Senior Judge Allocations

Janica Bisharat presented the senior judge allocations for FY17, noting that the judicial salary increase raised the per diem rate (cost per day) for senior judges, which decreased available senior judge days by 80. The allocation as presented reflects an increase in days for the 4th and 5th judicial districts to cover iCourt deployment, as well as 26 days of coverage for Administrative District Judges. Once approved by the Court, the senior judge allocations will run from mid-May 2016 to mid-May 2017.

It was emphasized that because the senior judge allocation is now a separate legislative budget function, there will be more transparency in terms of senior judge use. Each judicial district was encouraged to strategize how best to allocate their judicial resources to use their senior judge days wisely and to stay within their allocation.

Following discussion, IT WAS MOVED BY JUDGE BRUDIE AND SECONDED BY KARLENE BEHIRINGER TO RECOMMEND THE FY17 SENIOR JUDGE ALLOCATIONS TO THE COURT FOR ITS CONSIDERATION. THE MOTION PASSED UNANIMOUSLY.

e. Recommendation for 3% Change in Employee Compensation

Andrea Patterson presented information regarding the 3% change in employee compensation (CEC) provided by the legislature, outlining the history of past CECs and court action, as well as a recommendation for early implementation of the CEC this year, retroactive to May 1st, subject to approval by each employee's supervisor.

IT WAS MOVED BY JUDGE DUNN AND SECONDED BY JUDGE BEVAN TO APPROVE THE CEC RECOMMENDATIONS FOR NON-JUDICIAL EMPLOYEES FOR THE COURT'S CONSIDERATION. THE MOTION PASSED (J. Melanson abstained).

Action Items

- The FY17 senior judge allocations will be forwarded to the Court for its consideration.
- The CEC recommendations for non-judicial employees will be forwarded to the Court for its consideration.

3. Summary of 2016 Legislation, including the Court's Defects in the Law

Michael Henderson and Judge Wood reviewed the recently concluded legislative session. Among the bills discussed were:

Court bills

S1328a – The bill amends the Child Protective Act to reflect requirements of the federal Preventing Sex Trafficking and Strengthening Families Act and the Fostering Connections Act, to require courts to make inquiries concerning each child's possible status as an Indian child, and requiring DHW reports to the court on any psychotropic drugs being prescribed for the child.

HB 461a – This is the bill that provides that 80% of the moneys from the surcharge will go to the general fund, rather than the Drug Court, Mental Health Court and Family Court Services Fund; it is part of the agreement that will provide general funding for court obligations that were being paid out of the Fund.

HB 429 – This bill amended I.C. § 37-2738 to provide that restrictions on the granting of withheld judgments in controlled substance cases would not apply to problem solving court participants.

SB 1327 – This bill corrects the definition of "neglect" in I.C. § 18-1505, the statute addressing the crime of neglect, abuse or exploitation of a vulnerable adult.

SB 1352 – This bill provides a procedure for terminating or modifying a guardianship of a minor where the guardianship did not arise from a CPA case.

Other bills affecting the courts

HB 556a – This bill grew out of concerns about the manner in which DHW was dealing with foster care situations. It was substantially modified in the amendment process in the Senate.

HCR 59 – This bill, arising from the same concerns underlying HB 556a, creates an interim committee that will study Idaho's foster care system.

HB 491a – This bill enacts new provisions addressing non-consensual common law liens; it will not result in significant substantive changes from the prior legislation.

SB 1420 – The bill that increases the annual salaries of district judges and magistrate judges by \$4,500.

HB 439 – Clarifies that the State Appellate Public Defender shall represent indigent defendants in interlocutory appeals and in appeals where post-conviction relief was granted.

[HB 504](#) – This bill provides for indigent defense grants to counties to aid them in meeting standards set by the bill and by the State Public Defense Commission; it enlarges the duties and authority of the Commission.

[HB 524](#) and [HB 525a](#) – These bills address torture of companion animals, making it a crime, and provide judicial procedures for dealing with dangerous and at-risk dogs.

[HB 580](#) – This bill amends the rape statute to make it gender neutral and to provide that rape is committed where the victim of penetration is prevented from resistance due to an objectively reasonable belief that resistance would be futile or would result in force or violence. An earlier version of this bill that would also have created the crime of sexual battery of an adult encountered resistance and was dropped.

[SB 1361](#) – This bill allows counties to use the County Justice Fund, the current expense fund, or the indigent fund to pay for public defense services.

[SB 1373](#) – This bill allows the issuing of protection orders for victims of malicious harassment, stalking, or telephone harassment.

[SB 1297a](#) – This bill authorizes the Secretary of State to develop and implement online voter registration.

[SB 1389](#) – This bill permits any resident of Idaho who is at least 21, and is not subject to certain enumerated disqualifications, to carry a concealed handgun.

[HB 495](#) – This bill provides that any person who is found guilty of underage possession of alcohol and who does not have any alcohol or drug related findings of guilt during the next five years will have the finding of guilt vacated and sealed.

[HB 555a](#) – This bill creates the juvenile offense of sexual exploitation of a child by electronic means (sexting).

[SB 1235](#) – This bill provides that the court may make an informal adjustment in a JCA case when the juvenile has entered an admission at any point in the proceedings.

4. FY18 Budget Matters (ending June 30, 2018)

- a. Roland Gammill outlined the process and deadlines for the FY18 budget submission for the Administrative Conference, which must then be submitted to the Legislative Services Office by November 1, 2016.
 - (1) Budget enhancement requests from each judicial district and divisions were reviewed and commented on by each district and director. Judge Melanson reported that the Court of Appeals requests consideration that because the Court of Appeals judges did not receive the salary increase that resulted from SB1420, and suggested that the \$1500 differential between district judges and court appellate judges should be increased.
 - (2) Known FY18 budget priorities include:
 - Revision of the Technology Funding / Business Plan
 - Judges Retirement Fund contribution rates
 - Judicial CEC
 - Remainder of funding for JEEP (pending FY19)

Action Item

Following discussion of the FY18 budget requests presented, the Conference requested additional analysis and details for the following items be prepared for review at the July Administrative Conference (in no particular order):

- Judicial salary increase options – specific request to address the compression between Court of Appeals and District Judges (Judge Wood)
- Judges Retirement contribution rates (Andrea)
- Revision of the Technology funding and business plan (Roland, Kevin)
- Remainder of funding for JEEP (Janica, Andrea)
- Potential new judge request for DJ in 1st district Bonner county (Janica, Taunya)
- Potential additional general funded senior judge days (Janica, Andrea)
- Potential additional language access request (Janica)
- Potential additional education request (Janica)
- Potential additional CASA request (Kerry)

F. Achieving the Court's Strategic Goals and Objectives

1. Proposed amendments to the Court's Strategic Goals and Objectives were discussed, with "procedural fairness" suggested as an update of the language. It was the consensus of the Conference that a revised draft of the Court's Strategic Goals and Objectives be forwarded to the Court for its consideration.

Action Item

- The revised draft of the Court's Strategic Goals and Objectives will be forwarded to the Court for its consideration.

2. Ensure Access to Justice / Enhance the ability to efficiently conduct court business by developing technologies, especially electronic filing of all court documents.

Kevin Iwersen provided the Conference with an update on recent developments in the IT Strategic Plan, including:

- The Ada County project phase is currently on track for a summer 2016 deployment
- Wave planning continues, with 4 waves proposed for the delivery of Odyssey to groups of multiple counties
- Results are being reviewed of the on-site efficiency analysis conducted in Twin Falls County to determine key areas that need to be improved

A memo was provided to the Conference, outlining a plan to provide access to public electronic documents to a limited number of extended access user groups.

IT WAS MOVED BY JUDGE DUNN AND SECONDED BY JUDGE SULLIVAN TO RECOMMEND TO THE COURT FOR ITS CONSIDERATION THE ACCESS TO PUBLIC ELECTRONIC DOCUMENTS TO A LIMITED NUMBER OF EXTENDED ACCESS USER GROUPS AS OUTLINED. THE MOTION PASSED UNANIMOUSLY.

Action Item

- A proposal to provide access to public electronic documents to a limited number of extended access user groups as outlined will be forwarded to the Court for its consideration.

At 5:04 pm MDT, the Conference adjourned until 8:30 am MDT, Friday, April 15, 2016.

3. Provide Timely, Fair, and Impartial Case Resolution / Advance justice by resolving cases as early as possible, while guaranteeing the rights of the parties.

Administrative District Judge Stephen Dunn and Senior Judge Barry Wood updated the Conference on the progress of the Advancing Justice Committee generally, and the progress of approvals of caseflow management plans.

4. Retirement Matters

Andrea Patterson provided an update on the following items, which will remain on Administrative Conference agendas until all issues are resolved:

- a. Judges' Retirement Fund (JRF) Update: The conference reviewed materials related to the germane committee's consideration of temporary rules relating to the increased contribution rates for the JRF that will become effective July 1, 2017, as well as correspondence provided to members of the Joint Finance-Appropriations Committee relating to the judicial salaries and retirement benefits of Idaho as compared to western states, including the benefit levels, salaries and contribution rates.
- b. PERSI Eligibility Update: Still pending.
- c. Magistrates retirement update: nothing to report at this time.

G. Other Business

1. Proposed revisions to the Judicial Code of Conduct

Chief Justice Jim Jones noted the various reviews of the Judicial Code of Conduct conducted since 2007, and explained the items considered in the most recent examination. The Code will be considered at the next Judicial Council meeting in May, and Chief Justice Jones asked that observations, concerns, or comments be forwarded to him in the next week or two for consideration.

2. Review Proposed Rule Amendments

- a. Proposed amendments to Misdemeanor and Infraction Rules: The Conference reviewed proposed amendments to the Infraction and Misdemeanor Rules and forms contained in the rules that had been updated.

Following discussion, IT WAS MOVED BY JUDGE BEVAN AND SECONDED BY JUDGE FORD TO RECOMMEND THE PROPOSED AMENDMENTS TO THE MISDEMEANOR AND INFRACTION RULES TO THE COURT FOR ITS CONSIDERATION. THE MOTION PASSED UNANIMOUSLY.

- b. Proposed rules from the Children and Families in the Courts Committee / Idaho Rules of Family Law Procedure [112, 201.C, 207, 720, 803.D, 819]: The Conference reviewed proposed amendments to Rules 201.C, 112, 207, 803, and new rules 720 and 819 from the Children and Families and the Courts Committee (CFCC). Members of the Conference expressed concern that a filing fee would not be assessed for stipulations under Rule 201.C. It was suggested that the CFCC work with the Civil Rules Committee and others to ensure that a filing fee is assessed in cases where modifications are initiated by stipulation. The Conference discussed Rule 720 and members of the Conference expressed concerns that the qualification requirements under the new rule would limit or potentially eliminate the pool of available providers within their districts. It was suggested that the Conference approve the rule to allow the CFCC to evaluate the requirements over the next year and determine if amendments are needed.

Following discussion, IT WAS MOVED BY JUDGE MERICA AND SECONDED BY JUDGE BRUDIE TO RECOMMEND THE PRESENTED AMENDMENTS OR NEW RULES IN THE IDAHO RULES OF FAMILY LAW PROCEDURE TO THE COURT FOR ITS CONSIDERATION. THE MOTION PASSED UNANIMOUSLY.

- c. Proposed amendments to Idaho Juvenile Rule 19: The Conference reviewed proposed amendments to Rules 19 from the Juvenile Justice Advisory Team (JJAT).

Following discussion, IT WAS MOVED BY JUDGE MELANSON AND SECONDED BY KARLENE BEHRINGER TO RECOMMEND THE PROPOSED AMENDMENTS TO IDAHO JUVENILE RULE 19 TO THE COURT FOR ITS CONSIDERATION. THE MOTION PASSED UNANIMOUSLY.

- d. Proposed amendments to ICAR 56 from the Children & Families in the Courts Committee were presented, to clarify the confusion between the rule and statute regarding partial waivers.

IT WAS MOVED BY JUDGE BEVAN AND SECONDED BY JUDGE MERICA TO RECOMMEND THE PROPOSED AMENDMENTS TO ICAR 56 TO THE COURT FOR ITS CONSIDERATION. THE MOTION PASSED UNANIMOUSLY.

Action Items

- The proposed amendments to the Misdemeanor and Infractions Rules will be forwarded to the Court for its consideration.
 - The proposed amendments to and new rules in the Idaho Rules of Family Law Procedure will be forwarded to the Court for its consideration.
 - The proposed amendments to Idaho Juvenile Rule 19 will be forwarded to the Court for its consideration.
 - The proposed amendments to ICAR 56 will be forwarded to the Court for its consideration.
3. Update on Remodel of the Supreme Court basement: Kevin Iwersen reported that, after having the IT operations located offsite for the last 1.5 years, plans are moving forward to renovate the Supreme Court basement area so that IT can move back into the building later this fall or early winter.

H. Discuss Proposed agenda / plans: July 12-13, 2016 Administrative Conference in Boise

Tuesday, July 12 (morning) Administrative District Judges Meeting
 Tuesday, July 12 (morning) Trial Court Administrators Meeting
 Tuesday, July 12 (afternoon) Administrative Conference
 Wednesday, July 13 (morning) Administrative Conference

I. Upcoming Dates of Importance to the Administrative Conference

October 2016 / Boise

Thursday, October 13 (morning) Administrative District Judges Meeting
 Thursday, October 13 (morning) Trial Court Administrators Meeting
 Thursday, October 13 (afternoon) Administrative Conference
 Friday, October 14 (morning) Administrative Conference

February 2017 / Boise ** Checking with IAC on the 2017 Clerks/Judges date so we can schedule accordingly **

April 2017 / Boise

Thursday, April 20 (morning) Administrative District Judges Meeting
 Thursday, April 20 (morning) Trial Court Administrators Meeting
 Thursday, April 20 (afternoon) Administrative Conference
 Friday, April 21 (morning) Administrative Conference

July 2017 / Moscow

Tuesday, July 11 (morning) Administrative District Judges Meeting
 Tuesday, July 11 (morning) Trial Court Administrators Meeting
 Tuesday, July 11 (afternoon) Administrative Conference
 Wednesday, July 12 (morning) Administrative Conference
 Wednesday – Friday, July 12-14 Idaho State Bar's Annual Meeting

October 2017 / Boise

Thursday, October 19 (morning) Administrative District Judges Meeting
 Thursday, October 19 (morning) Trial Court Administrators Meeting
 Thursday, October 19 (afternoon) Administrative Conference
 Friday, October 20 (morning) Administrative Conference

IT WAS MOVED BY JUDGE DUNN AND SECONDED BY HANSEN TO ADJOURN THE ADMINISTRATIVE CONFERENCE AT 10:53 am MDT.